

ACTION EUR-00

RELEASED IN FULL

INFO	LOG-00	AID-00	A-00	ACQ-00	CCO-00	CG-00	CIAE-00
	COME-00	CTME-00	DODE-00	DOEE-00	DOTE-00	WHA-00	DS-00
	EB-00	FAAE-00	FBIE-00	UTED-00	VCI-00	TEDE-00	INR-00
	INSE-00	L-00	M-00	VCIE-00	NRC-00	NSAE-00	ISN-00
	NSCE-00	OCS-00	OMB-00	PA-00	PM-00	PRS-00	P-00
	SCT-00	ISNE-00	SP-00	SSO-00	SS-00	TRSE-00	T-00
	USSS-00	ASDS-00	IIP-00	PMB-00	DSCC-00	DRL-00	G-00
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FM AMCONSUL HAMBURG

TO SECSTATE WASHDC PRIORITY 0083

INFO AMEMBASSY BERLIN PRIORITY

FRG COLLECTIVE

EU INTEREST

USOFFICE DEPT OF JUSTICE WASHINGTON DC

DEPT OF JUSTICE WASHINGTON DC

EUROPEAN POLITICAL COLLECTIVE

AMCONSUL HAMBURG

UNCLAS HAMBURG 000074

SENSITIVE

DEPARTMENT FOR EUR/AGS, EUR/PPD, I/LEI, AND S/CT

JUSTICE FOR BARBARA BERMAN AND PATRICIA REEDY

E.O. 12958: N/A

TAGS: PTER, KJUS, PREL, ASEC, GM

SUBJECT: MOTASSADEQ FOUND GUILTY OF ACCESSORY TO MURDER OF 9/11
VICTIMS

REF: A. HAMBURG 067,

B. HAMBURG 012,

C. 05 HAMBURG 074

D. 05 HAMBURG 008

E. 05 BERLIN 1952,

F. 05 BERLIN 808 AND PREVIOUS

SENSITIVE BUT UNCLASSIFIED. PLEASE PROTECT ACCORDINGLY.

1. (U) Summary: On November 16, the German Federal High Court in Karlsruhe found Hamburg 9/11 cell member Mounir el-Motassadeq guilty of both membership in a terrorist organization and 246 counts of accessory to murder. The ruling is a partial rescission of the Hamburg Higher Regional Court's August 19,

UNITED STATES DEPARTMENT OF STATE

REVIEW AUTHORITY: ARCHIE M BOLSTER

DATE/CASE ID: 11 SEP 2008 200706444

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2005 ruling, which only convicted him of membership in a terrorist organization. The case will be handed back to the Hamburg court for sentencing on the accessory to murder charge. Later on November 16, the Hamburg court ruled against the Federal Prosecutor's Office's request to take Motassadeq into pre-trial custody. Motassadeq accordingly remains free, but is now required to check in with Hamburg police daily. The sentencing is expected to take place in early 2007. Motassadeq's new term could range between seven and fifteen years. End Summary.

BACKGROUND

2. (U) In February 2003, the Hamburg court convicted and sentenced Mounir el-Motassadeq to fifteen years imprisonment on charges of membership in a terrorist organization and 3,066 counts of accessory to murder stemming from the attacks of 9/11. Following the acquittal by the same court of fellow 9/11 suspect Abdelghani Mzoudi in February 2004, the Federal High Court on March 4, 2004 overturned Motassadeq's conviction and ordered a retrial because of a perceived lack of full access to potentially exculpatory testimony from Khaled Sheikh Mohammed and Ramzi Binalshibh whom the courts assumed to be in U.S. custody. On August 19, 2005 the Hamburg court in its retrial convicted Motassadeq only of membership in a terrorist organization and sentenced him to seven years in prison. At the same time the court acquitted him on the charge of accessory to murder. On February 7, 2006 the Hamburg court released Motassadeq from detention following a German Federal Constitutional Court ruling that Motassadeq should remain free pending the outcome of his appeal of the August 2005 ruling.

MOTASSADEQ GUILTY, HAMBURG TO DETERMINE SENTENCE

3. (U) On November 16, Federal High Court Chief Justice Klaus Tolsdorf announced a partial rescission of the Hamburg court's August 19, 2005 ruling and found Motassadeq guilty not only of membership in a terrorist organization, but also of 246 counts of accessory to murder. ConGen Pol/Econ Specialist attended the hearing. The 246 cases represent the passengers and crew of all four planes hijacked in the 9/11 attacks. The High Court ruled that the Hamburg court's reasoning in its August 2005 decision was inconsistent. According to the High Court, the evidence was clear that Motassadeq knew that the terrorists were planning to crash airplanes in the attack. Unlike the Hamburg court, the Federal High Court ruled it irrelevant whether Motassadeq knew the exact timing, dimension, or targets of the attacks. The

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High Court ordered that the case be sent back to the lower court solely to determine the length of the sentence. No additional evidence will be considered, the High Court ruled, but added that the Hamburg court could take into account all of the 3,066 deaths resulting from the attacks in New York and Washington as an aggravating factor when determining the sentence. The longest sentence for accessory to murder is fifteen years.

4. (U) In its reasoning, the High Court also noted that it would have been beneficial to the case if Binalshibh had been made available to testify rather than just via written witness summaries. However, the presiding judge stated that it was not the High Court's role to speculate on or criticize this issue. The most important fact for the case, he reasoned, was that the Hamburg court did everything in its power to obtain Binalshibh as a witness.

MOTASSADEQ STILL FREE

5. (U) Shortly after the High Court's ruling, the Federal Prosecutor's Office requested that Motassadeq once again be

taken into custody as a flight risk. Later on November 16, a Hamburg court rejected the Federal Prosecutor's application to reinstate the arrest warrant against Motassadeq. However, the Hamburg court tightened the imposed conditions by requiring Motassadeq to report daily to the police. Moreover, German authorities will keep Motassadeq's passport, he must promptly report any changes of residence and may not leave Hamburg. The Hamburg court conceded that the prospect of being a longer sentence as well as the fact that Motassadeq's family left Hamburg two months ago did increase the risk of flight. However, the Hamburg court ruled that given the Federal Constitutional Court's February 7, 2006 decision, "tightening of the imposition to report does suffice to effectively counter the flight risk." The Hamburg court noted that Motassadeq's good conduct thus far had been a key consideration in reaching this decision.

SENTENCING IN SPRING 2007

6. (SBU) Hamburg court Press Spokeswoman Sabine Westphalen told us November 16 that the Hamburg Seventh Criminal Senate will handle the sentencing decision. (Note: This is a different panel from the one that ruled in August 2005 on Motassadeq. End Note.) The presiding judge, Dr. Carsten Beckmann, has extensive experience in criminal cases and some experience in terrorist

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cases. A court date is expected to be set for spring 2007. Westphalen noted that once the court goes into session, it is expected to sentence Motassadeq within days. Motassadeq's only remaining recourse is to appeal the November 16 decision at Germany's Federal Constitutional Court.

7. (U) Comment: In directly finding Motassadeq guilty the Federal High Court exercised legal authority that it seldom uses and, thus, signaled the significance of its decision. The Federal High Court called the ruling a great step towards reaching a closure of the Hamburg cell cases. End Comment.
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